

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

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In re:

**ELENITA P. UTLEY,**

**BANKRUPTCY CASE NO.: 10-82300**

Soc. Sec. No. xxx-xx-6333

Mailing Address: 1608 Nixon Street, , Durham, NC  
27707-

Debtor.

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**ELENITA P. UTLEY,**

Plaintiff, **A.P. NO.:** \_\_\_\_\_

**UNITED GUARANTY RESIDENTIAL  
INSURANCE COMPANY OF NORTH  
CAROLINA,**

Defendant.

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**COMPLAINT TO VALUE COLLATERAL**

The Plaintiff, above-named, respectfully alleges as follows:

1. That this matter is a core proceeding pursuant to 28 U.S.C. § 157, and that the court has jurisdiction pursuant to 28 U.S.C. §§ 151, 157 and 1334.
2. This Complaint was filed, pursuant to 11 U.S.C. §§ 506, 1322(b)(2), 1325(a)(5) and 1327 (c), and in accordance with Bankruptcy Rule 7001, to value their residence for the purpose of determining the secured status of the mortgage claim held by UNITED GUARANTY RESIDENTIAL INSURANCE COMPANY OF NORTH CAROLINA.
3. The Plaintiff is filed this bankruptcy case on December 21, 2010, seeking protection under Chapter 13 of Title 11 of the United States Code.
4. The Defendant UNITED GUARANTY RESIDENTIAL INSURANCE COMPANY OF NORTH CAROLINA is a corporation and/or a partnership with an office and principal place of business located at Post Office Box 27420, Greensboro, NC 27420- and/or Post Office Box 21367, , Greensboro, NC 27420-1367 .This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. §§ 506, 1322(b)(2), 1325(a)(5) and 1327 (c).
5. The Plaintiff owns real property located at 1608 Nixon Street, Durham NC 27707. The legal description of the property is as follows:

ALL THAT CERTAIN LAND OR PARCEL OF LAND SITUATED, LYING AND BEING ON THE SOUTH SIDE OF NIXON STREET IN PATTERSON TOWNSHIP, DURHAM COUNTY, NORTH CAROLINA AND KNOWN AND DESIGNATED AS LOT NO. 11 OF THE SUBDIVISION OF THE PROPERTY OF BOBBY RO. ROBERTS, KNOWN AS ROLLINGWOOD AS SURVEYED BY F. M. CARLISLE IN 1958 AND WHICH SAID LOT IS MORE PARTICULARLY DESCRIBED AS BEGINNING AT A STAKE IN THE SOUTH PROPERTY LINE OF NIXON STREET, THE NORTHWEST CORNER OF LOT NO. 10; RUNNING THENCE WITH THE LINE OF THE SAID, LOT SOUTH 4° 32' EAST 195 FEET TOP A STAKE; RUNNING THENCE SOUTH 61°15' WEST 80 FEET TO A STAKE IN THE EDGE OF THE SAID TRAFFIC CIRCLE AT THE END OF SHERMAN AVENUE; RUNNING THENCE WITH THE SAID TRAFFIC CIRCLE AND ALONG THE ARC OF THE CIRCLE WITH A RADIUS OF 50 FEET IN A NORTHERN DIRECTION\_ FEET TO A STAKE, THE SOUTHEAST CORNER OF LOT NO. 12; RUNNING THENCE WITH THE LINE OF THE SAID LOT NORTH 12° 03' EAST 154 FEET TO A STAKE IN THE SOUTH PROPERTY LINE OF NIXON STREET; RUNNING THENCE ALONG THE SOUTH PROPERTY LINE OF SAID STREET AND ALONG THE ARC OF A CIRCLE TO THE LEFT WITH A RADIUS OF 236.68 FEET IN AN EASTERN DIRECTION 70 FEET TO THE BEGINNING.

Being that parcel of land conveyed to RAYMOND C. UTLEY AND WIFE, ELNETA UTLEY, TENANTS BY THE ENTIRETY from BOBBY R. ROBERTS AND WIFE, RUBY M. ROBERTS by that deed dated 09/12/1968 and recorded 06/20-1968 in Deed Book 347, at Page 271 of the Durham County, NC Public Registry.

The tax map or parcel ID No. is: 132778

6. American General holds a first Deed of Trust on such property with an payoff balance, as of the date this case was filed in the amount of approximately \$71,330.00, as indicated on the proof of claim filed on January 28, 2011. This Deed of Trust originally given to and held by Equity One Mortgage Services, Inc. This Deed of Trust was recorded on July 23, 2003, in Book 4015 at Page 624, Durham County Registry of Deeds.
7. UNITED GUARANTY RESIDENTIAL INSURANCE COMPANY OF NORTH CAROLINA holds a second Deed of Trust on such property with a payoff balance, as of the date this case was filed in the amount of approximately \$14,683.79. This Deed of Trust originally given to and held by Bank of America, N.A. This Deed of Trust was recorded on June 12, 2000, in Book 2850 at Page 1, Durham County Registry of Deeds, and subordinated to the American General Deed of Trust by Subordination agreement recorded July 23, 2003 in Book 4015, Page 642, Durham County Registry.
8. The fair market value of the said property is not greater than \$52,537.00.
9. Pursuant to 11 U.S.C. §§ 506, 1322(b)(2), 1325(a)(5) and 1327 (c) of the Bankruptcy Code and In re: Kidd, 161 B.R. 769 (Bankr. E.D.N.C. 1993), the loan with UNITED GUARANTY

RESIDENTIAL INSURANCE COMPANY OF NORTH CAROLINA, secured by a second Deed of Trust against the Plaintiff's said property, is an unsecured claim. In turn, pursuant to 11 U.S.C. § 506(d), the lien securing said loan is void.

10. The Deed of Trust held and/or serviced by the Defendant takes an additional security interest in, among other personal property, the Plaintiff's escrow account.
11. Pursuant to In re Bradsher, 2010 WL 545967 (Bankr. M.D.N.C. February 16, 2010), such additional collateral renders 11 U.S.C. § 1322(b)(2) inapplicable.

**WHEREFORE**, the Plaintiff prays the Court find that said claim held by UNITED GUARANTY RESIDENTIAL INSURANCE COMPANY OF NORTH CAROLINA, which is secured by a second Deed of Trust upon said property, to be wholly unsecured, and that said claim should therefore be classified an unsecured claim for the purpose of this Chapter 13 case. The Plaintiff further prays that the Court order UNITED GUARANTY RESIDENTIAL INSURANCE COMPANY OF NORTH CAROLINA to cancel the said Deed of Trust forthwith upon the completion of the Plaintiff's Chapter 13 plan and the granting of the Plaintiff's discharge, and that the Court grant such other and further relief as to the Court seems just and proper.

Dated: August 22, 2011

**LAW OFFICES OF JOHN T. ORCUTT, P.C.**

/s Edward Boltz

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Edward Boltz

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